

FILE NO. A20-0918
STATE OF MINNESOTA
IN SUPREME COURT



In Re Petition for Disciplinary Action
against WILLIAM BERNARD BUTLER,
a Minnesota Attorney,
Registration No. 0227912.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION
FOR DISCIPLINE**

The above-captioned matter was heard on October 19, 2020, by the undersigned acting as Referee by appointment of the Minnesota Supreme Court. Cassie Hanson, Senior Assistant Director, appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Respondent William Bernard Butler appeared *pro se*.

The hearing was conducted on the Director's June 11, 2020, petition for disciplinary action (petition) and July 16, 2020, supplementary petition for disciplinary action (supplementary petition). The Director offered Exhibits 1 through 29, all of which were received. Respondent offered Exhibits 40 through 46. Only Exhibit 46 was received. The Director presented the testimony of Lynda Nelson, and called respondent to testify. Respondent refused to swear or affirm to the truthfulness of his testimony, or even state that his testimony would be truthful, which constituted a refusal to testify during the hearing. Respondent presented no other evidence or testimony other than Ex. 46 in defense or mitigation of the charged misconduct.

The parties were directed to submit on or before November 2, 2020, proposed findings of fact, conclusions of law, and recommendation for appropriate discipline. The Referee's findings of fact, conclusions of law and recommendation are due to the Supreme Court no later than December 4, 2020.

In his answer to the petition, respondent admitted certain factual allegations and denied others. The findings and conclusions made below are based upon respondent's

admissions, the documentary evidence the parties submitted, the testimony presented, the demeanor and credibility of the witness as determined by the undersigned and the reasonable inferences to be drawn from the documents and testimony. If respondent admits a particular factual finding or conclusion of law made below, then even if the Director may have provided additional evidence to establish the finding, no other citation will necessarily be made. For each factual finding made below, the undersigned evaluated the relevant exhibits and testimony, accepted as credible the testimony consistent with the finding and did not accept the testimony inconsistent with the finding.

Based upon the evidence as outlined above, and upon all of the files, records and proceedings herein, the Referee makes the following:

FINDINGS OF FACT

1. Respondent has the following disciplinary history:

a. By opinion filed August 12, 2015, respondent was indefinitely suspended from the practice of law, effective 14 days from the date of the filing of that opinion, for a substantial pattern of misconduct including pursuit of frivolous litigation on behalf of 40 clients, fraudulent joinder of parties, refiling of previously dismissed cases, and failure to pay \$300,000 in court-ordered sanctions in violation of Rules 3.1, 3.2, and 3.4(c), Minnesota Rules of Professional Conduct (MRPC) (Ex. 28).

b. On January 27, 2017, respondent was issued an admonition for identifying himself as “General Counsel” for a company that employed him and providing legal analysis on behalf of the company while he was suspended from the practice of law in violation of Rule 5.5(a) and (b)(2), MRPC (Ex. 29).

Criminal Conviction for Felony Willful Failure to File Tax Returns to Evade Paying Tax

2. Respondent was admitted to practice law on October 23, 1992.

Respondent has at all times relevant been suspended from the practice of law per the Court’s October 12, 2015, suspension order.

3. On June 11, 2018, respondent was charged with two counts of willful failure to file tax returns to attempt to evade or defeat tax in violation of Minn. Stat. § 289A.63, subdiv. 1(a). Each constitutes a felony and carries a maximum sentence of five years' imprisonment or a \$10,000 fine or both (R. Ans.; Ex. 1).¹

4. On March 20, 2019, the jury returned a guilty verdict on each felony count (R. Ans.; Ex. 2). As such, respondent was convicted of two felony counts of willful tax evasion.

5. On May 8, 2019, respondent was sentenced. Respondent received a stay of imposition pursuant to Minn. Stat. § 609.135, so that successful completion of his criminal probation would result in a misdemeanor conviction, and was placed on probation for three years (*id.*). Respondent's criminal probation will conclude on May 8, 2022. The conditions of probation require respondent to file tax returns for 2012 through 2019 (*id.*) (Ex. 4).

6. Respondent has filed his state and federal income taxes as required so far under the terms of his criminal probation (Ex. 46).

7. Respondent's answer, opening statement and other statements during the October 19, 2020, hearing indicate that respondent currently maintains that he is not legally required to file his taxes and that he continues to rely on unreasonable and widely rejected legal positions as the basis for his belief (Resp. Ans.). Because respondent refused to testify, it is also unknown whether he will file his tax returns after his criminal probation ends.

8. Respondent's failure to file his taxes harmed the integrity of the legal profession. Respondent's criminal conviction further harmed the public faith in the ability of lawyers to remain law abiding.

¹ At the October 19, 2020, hearing before the referee, the Director substituted certified versions of her Exhibits 1, 2, and 4 for the uncertified versions previously provided.

Personal Use of a Trust Account While Suspended from the Practice of Law

9. Although respondent has been indefinitely suspended from the practice of law since August 26, 2015, he continued to maintain his Wells Fargo Bank trust account no. -8209 entitled “Butler Liberty Law LLC” (R. Ans.; Exs. 5, 11-13, 26).

10. On August 13, 2019, respondent’s trust account became overdrawn in the amount of \$243.68 after an electronic payment for a car lease (“Honda lease”) was processed from the account (Resp. Ans.; Nelson Test.; Ex. 8). This was four years after respondent was suspended.

11. On August 19, 2019, Wells Fargo Bank reported the overdraft to the Director as required by Rule 1.15(j) through (o), MRPC (Resp. Ans.; Nelson Test.; Ex. 8).

12. On September 3, 2019, the Director issued a notice of investigation to respondent (Resp. Ans.; Nelson Test.; Ex. 6). When he failed to respond to the Director’s multiple inquires, the Director subpoenaed bank records for his trust account (Exs. 23-24). *See* paragraph 35 below.

13. The bank statements for respondent’s trust account show a \$1.00 balance and no activity in the account during the period August 1, 2015, to May 19, 2019 (Resp. Ans.; Nelson Test.; Ex. 26, pp. 13-139).

14. On May 20, 2019, respondent deposited a \$10,000 personal check into the account, then made several cash withdrawals and issued several checks, primarily to himself, over the next several months (Resp. Ans.; Nelson Test.; Exs. 7, 26, pp. 140-154).

15. The Director’s audit determined additional electronic payments for the Honda lease were processed from respondent’s trust account on May 24, June 13, July 15, August 13, and September 13, 2019 (R. Ans.; Nelson Test.; Ex. 7).

16. A car insurance payment in the amount of \$342.50 to Progressive Insurance was also electronically processed from respondent’s trust account on May 29, 2019 (Resp. Ans.; Nelson Test.; Ex. 7).

17. Respondent deposited additional personal funds into his trust account, including mobile deposits in the amounts of \$21.83 on September 5, 2019, and \$760.00 on September 6, 2019 (Resp. Ans.; Nelson Test.; Ex. 7).

18. On October 16, 2019, an electronic payment for the Honda lease generated a second overdraft notice and created a shortage in the amount of \$175.85 (Resp. Ans.; Nelson Test.; Ex. 8). On November 13, 2019, the Director wrote to respondent and directed him to close his trust account, if he had not already done so, and to provide verification of closure (Resp. Ans. Nelson Test.; Ex. 9).

19. Respondent responded to the Director's November 13, 2019, letter by email on November 13, 2019. Respondent stated that his trust account remained open and with a negative balance. Respondent stated, "t [sic] intend to close the account as soon as I am able if [Wells Fargo Bank] will allow it with a negative balance" (Resp. Ans.; Nelson Test.; Ex. 10). Because respondent refused to testify, it is unknown whether he actually contacted Wells Fargo to close the account.

20. Between November and December 2019, respondent incurred three additional overdrafts on his trust account: a November 13, 2019, Honda lease payment resulted in a negative balance of \$447.85 (Resp. Ans.; Nelson Test.; Ex. 11); a November 26, 2019, car insurance payment to Progressive Insurance resulted in a negative balance of \$690.35 (Resp. Ans.; Nelson Test.; Ex. 12); and a December 3, 2019, car insurance payment to Progressive Insurance increased the negative balance in respondent's trust account to \$725.35 (Resp. Ans.; Nelson Test.; Ex. 13).

21. Respondent's payment of personal bills from his trust account resulted in five overdrafts (Nelson Test.). Respondent's trust account was closed by Wells Fargo sometime later in December 2019 (Resp. Ans.; Nelson Test.; Ex. 14). At the time the account was closed, the \$725.35 shortage remained unpaid. See paragraphs 23-24 below.

22. By emails dated April 29, 2020, and June 23, 2020, respondent explained he was unable to open any other bank accounts with Wells Fargo due to his criminal

conviction, so he deposited \$10,000 from a friend into his trust account (Resp. Ans.; Nelson Test.; Exs. 16- 17). Respondent also confirmed for this same reason he arranged for electronic payments to Honda and Progressive Insurance to be made from his trust account (Resp. Ans.; Ex. 16).

23. On June 23, 2020, the Director emailed respondent asking him to provide an update as to whether he had repaid Wells Fargo Bank for the negative balance in his trust account at time it was closed. That same day, respondent responded, "I have not. Please remind me what was overdrafted on that account and I will make them whole" (Nelson Test; Ex. 17).

24. Respondent never provided the Director with documentation the \$725.35 shortage on his trust account was repaid and respondent submitted no evidence thereof. Respondent's refusal to testify precluded him from providing evidence that these funds were repaid. Regardless, Wells Fargo sustained financial harm because the shortage persisted from at least December 2019 and remained unpaid on June 23, 2020, per respondent's email to the Director (Ex. 17).

25. Respondent's misuse of his trust account for personal expenses was intentional, because (1) he did not close his account when he was suspended in 2015; (2) he affirmatively provided his trust account bank number to his creditors and arranged for autopay of his personal bills out of his trust account; and (3) deposited personal funds into his account and disbursed funds to himself.

Holding Out as Authorized to Practice While Suspended

26. As stated in respondent's disciplinary history, he was admonished on January 27, 2017, for use of the title "General Counsel" in connection with his employment with a company and engaging in the unauthorized practice of law (Ex. 29).

27. During the next four years of respondent's suspension, he continued to maintain a website for his law firm, Butlerlibertylaw.com. As of mid-May 2019, this

website contained the statement, “William Bernard Butler is a Minnesota attorney” (Resp. Ans.; Exs. 18-19).

28. By letter dated May 16, 2019, the Director informed respondent that his website was misleading as to his license status and asked him to correct it (Resp. Ans.; Ex. 19).

29. By email on May 30, 2019, respondent stated that his website was “currently down” but that if and/or when restored, he would change it to the status “**is a non-practicing Minnesota attorney**” and include a link to the oral argument on respondent’s prior public discipline case (Resp. Ans.; Ex. 20) (emphasis added). Respondent’s suggested rephrasing is still misleading and evidences that respondent does not accept the restrictions placed upon him as a suspended attorney despite being admonished for the unauthorized practice of law in 2017.

30. Respondent’s website remains inoperative (Resp. Ans.).

Failure to Cooperate with the Director

31. On September 3, 2019, the Director mailed a notice of investigation to respondent about the overdraft on his trust account. The notice requested an explanation for the overdraft and respondent’s trust account books and records for the period August 1, 2015, to the present. The notice was sent to the address respondent maintained with Minnesota Lawyer Registration, which was 707 North Third Street, Suite 203, Minneapolis, MN, 55401 (lawyer registration address) (Resp. Ans.; Nelson Test.; Ex. 6). The letter was not returned as undeliverable. Respondent failed to respond (Resp. Ans.; Nelson Test.).

32. The Director had previously successfully written to respondent at the lawyer registration address during the course of her investigation in the criminal tax matter and the mail to this address was not returned by the post office (Nelson Test.; Exs. 19-20).

33. Pursuant to Rule 13(B), Rules of the Supreme Court on Lawyer Registration, lawyers are obligated to “immediately update the online registration

profile or notify the Lawyer Registration Office in writing of any change of postal address.” Respondent failed to do so (Nelson Test.).

34. On September 18, 2019, the Director wrote again to respondent requesting his response to the notice of investigation (Ex. 21). The Director sent the letter to both respondent’s lawyer registration address and to a residential address associated with respondent’s girlfriend with whom the Director believed respondent may have resided, i.e., 763 Butternut Avenue, St. Paul, MN 55102 (763 Butternut Avenue address) (Resp. Ans.; Nelson Test.; Ex. 21).

35. The copy of the Director’s September 18, 2019, letter that had been sent to respondent’s lawyer registration address was subsequently returned to the Director as undeliverable (Resp. Ans.; Nelson Test.; Ex. 22). The copy sent to the 763 Butternut Avenue address was not returned to the Director. Respondent again failed to respond (Resp. Ans.; Nelson Test.).

36. Contemporaneously, the Director sought an investigatory subpoena due to respondent’s failure to respond to the notice of investigation and the seriousness of a suspended attorney using a trust account for personal use (Nelson Test.). On September 18, 2019, the Director wrote to the Chair of the Lawyers Professional Responsibility Board (Chair) and, pursuant to Rule 8(c), Rules on Lawyers Professional Responsibility (RLPR), obtained an investigatory subpoena directed to Wells Fargo Bank to obtain respondent’s trust account records (Nelson Test.; Exs. 23-24). The Director received the bank records from Wells Fargo Bank on October 29, 2019 (Nelson Test.; Ex. 26).

37. On October 19, 2019, respondent emailed the Director stating:

The funds in the trust account are my funds. The reason they are in that account is because I could not open up a personal bank account after the tax trial. So the trust account was the only account I could use to deposit a gift from a friend meant to keep me afloat following being financially eviscerated by the State. The overdraft (I receive [sic] another one last week) is because I had set up the account to auto-pay on my car lease. I

assumed that if there weren't enough funds in the account that the bank would reject the auto-pay. But they keep paying and it keeps over drafting [sic].

I would really like you to find something else to do. I haven't paid license fees since 2014 and have no intention of renewing my license.

(Emphasis added) (Resp. Ans.; Nelson Test.; Ex. 27).

38. Respondent subsequently answered additional questions regarding his trust account in April and June 2020. *See* paragraphs 19 and 22 above.

39. Respondent refused to testify; therefore, there is no evidence to contradict the credible and documented timeline of communication presented by the Director regarding the parties' communications.

40. Respondent's failure to cooperate with the disciplinary investigation harmed the legal profession by undermining the integrity of the attorney discipline system.

Aggravating Factors

41. Respondent's prior disciplinary history is a substantial aggravating factor. Respondent's current misconduct is similar to his prior misconduct because it evidences a continuing disregard of his legal and ethical obligations. Respondent has not demonstrated the renewed commitment expected of a publicly-disciplined attorney and has continued to engage in conduct prohibited by his current suspension. Respondent's substantial disciplinary history warrants a more severe sanction in order to protect the public and uphold the integrity of the legal profession.

42. Respondent's lack of remorse is an aggravating factor. In his answer and during the hearing, respondent tried to relitigate the facts of his criminal conviction based upon unreasonable and widely rejected legal positions regarding the government's right to taxation. Respondent similarly fails to acknowledge the wrongfulness of his personal use of his trust account or how he maintained his website while suspended. Respondent does not acknowledge the restrictions placed upon him as a suspended attorney. Respondent also blames the Director for wrongful

prosecution and conspiring to send mail to a wrong address when respondent is responsible for not updating his address with Lawyer Registration.

43. Respondent's non-cooperation during the referee hearing is an aggravating factor. At trial, respondent refused to swear or affirm to the truthfulness of his testimony, or even state that his testimony would be truthful. By doing so, respondent refused to testify, which was prejudicial to the administration of justice. *See* Minn. Stat. § 588.01, subdiv. 3(9); Minn. Stat. § 588.20, subdiv. 2(6). Respondent's refusal to testify also violated his separate ethical obligation to cooperate in the disciplinary proceedings by appearing at a hearing and answering reasonable questions by the Director barring a legitimate 5th Amendment right, which was not the case here since respondent has already been convicted. *See* Rule 8.1(b) and 25(a)(3), RLPR.

a. Respondent's conduct was also in bad faith since respondent attached a personal affidavit to his answer wherein he affirms the truthfulness of his testimony. Respondent attempted to submit this affidavit into evidence and repeatedly referred to this affidavit as a basis for his testimony after it was ruled inadmissible. Respondent's conduct was designed to preclude his cross-examination.

b. Respondent claimed unconvincingly that he was unaware he would be called to testify by the Director despite having been served with the Director's witness list wherein he is named as a witness.

Mitigating Factors

44. Respondent offered no evidence of mitigation and did not testify.

CONCLUSIONS OF LAW

1. Respondent's failure to file his taxes and felony conviction on two counts of willful tax evasion violated Rule 8.4(b) and (d), MRPC.

2. Respondent's conduct in continuing to maintain a trust account following his suspension, use of the trust account to deposit and pay personal expenses and allowing overdrafts to occur on the account violated Rule 1.15(a), MRPC.

3. Respondent's conduct as holding himself out as authorized to practice while suspended violated Rules 5.5(b)(2) and 7.1, MRPC.

4. Respondent's conduct in failing to cooperate with the Director's investigation of the overdraft on his trust account violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

RECOMMENDATION

Based on the foregoing findings and conclusions, the undersigned recommends that:

1. Respondent William Bernard Butler be disbarred from the practice of law.
2. Respondent William Bernard Butler pay \$900 in costs, pursuant to Rule 24(a), RLPR.

Dated: December 4, 2020

BY THE COURT:

/s/ Rosanne Nathanson

ROSANNE NATHANSON
SUPREME COURT REFEREE